

Modern Transport of Warren, Inc. and Local 247, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America. Cases 7-CA-19851, 7-CA-20191, and 7-CA-20259

6 April 1984

DECISION AND ORDER

BY CHAIRMAN DOTSON AND MEMBERS
ZIMMERMAN AND DENNIS

On 1 February 1983 the National Labor Relations Board entered its Order in the above-entitled proceeding directing Modern Transport of Warren, Inc. and Modern Transport of Warren, Inc. Debtor-in-Possession,¹ among other actions, to make whole employees Henry Fountain and James Williams for any loss of pay they may have suffered by reason of its discrimination against them. A controversy having arisen over the amount of backpay due under the Board's Order, the Regional Director for Region 7 on 10 November 1983 issued a backpay specification and notice of hearing alleging the amounts of backpay due and notifying the Respondent that it should file a timely answer.

On 8 February 1984 the Regional Director issued an amended backpay specification² and notified the Respondent that it should file a timely answer. The Respondent failed to file an answer.

On 5 March 1984 counsel for the General Counsel filed a Motion for Default Summary Judgment. On 6 March 1984 the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the General Counsel's motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

On the entire record, the Board makes the following

Ruling on the Motion for Default Summary Judgment

Section 102.54 of the Board's Rules and Regulations provides that if an answer is not filed within

15 days from the service of the specification the Board may find the specification to be true. The amended backpay specification states that the Respondent shall file an answer within 15 days from the date of the amended specification, and that if the answer fails to deny the amended specification's allegations in the manner required under the Board's Rules and Regulations, and the failure to do so is not adequately explained, the allegations shall be deemed to be true.³

In the absence of any explanation for the Respondent's failure to file a timely answer, we grant the General Counsel's Motion for Default Summary Judgment.⁴

Accordingly, the Board concludes that the net backpay due the discriminatees, Henry Fountain and James Williams, and the payments due to various trust funds are as stated in the computations of the amended backpay specification, and orders the Respondent to pay those amounts to the discriminatees, and the various trust funds.

ORDER

The National Labor Relations Board orders the Respondent, Modern Transport of Warren, Inc., Warren, Michigan, its officers, agents, successors, and assigns, shall

1. Make whole each of the employees named below by paying them the amounts set forth adjacent to their names, plus interest computed in the manner prescribed in *Florida Steel Corp.*, 231 NLRB 651 (1977),⁵ and accrued to the date of payment, minus tax withholdings required by law:

Henry Fountain	\$32,752.20
James Williams	21,385.05

2. Make its employees whole by paying to the trust funds listed below the amounts set forth adjacent to their names:

International Brotherhood of Teamsters,
Chauffeurs, Warehousemen and Helpers of
America Pension Fund—\$7701.80

International Brotherhood of Teamsters,
Chauffeurs, Warehousemen and Helpers of
America Health and Welfare Fund—\$6370.50

¹ On 11 June 1982 the Respondent, Modern Transport of Warren, Inc., filed for bankruptcy under Chapter 11. On 28 September 1983 the United States Bankruptcy Court issued an "Order Closing Estate" because the Respondent failed to file financial statements or make reasonable progress toward the filing of a disclosure statement and plan of reorganization. The order was never served on the Board.

² The Motion for Default Summary Judgment states that the specification was amended "to reflect corrections of clerical errors and deletions of the proceedings in United States Bankruptcy Court . . . that were dismissed September 28, 1983"

³ On 23 January 1984 the General Counsel mailed a letter that was apparently not served advising the Respondent that the Region would file a Motion for Default Judgment if the Respondent did not file an answer to the original backpay specification. This letter also stated that on 23 January 1984 the Respondent's representative told counsel for the General Counsel in a telephone conversation that the Respondent would not file an answer to the backpay specification.

⁴ In granting the General Counsel's Motion for Default Summary Judgment, Chairman Dotson specifically relies on the total failure of the Respondent to respond to the allegations of the General Counsel's amended backpay specification. Because this proceeding is a default judgment, the Chairman regards it as being without precedential value.

⁵ See generally *Isis Plumbing Co.*, 138 NLRB 716 (1962).